

Eugene Scalia is a bright, sophisticated lawyer whose writings are well within the mainstream of ideas.

So he is not being attacked because he doesn't have the ability. He has all the ability you could possibly want. In fact, it is great that we can attract people of his talent and capability to public service. No, Eugene Scalia—Scalia the younger—is being attacked because of Scalia the elder. You might say, well, maybe he came up too quickly. We pointed out that isn't right.

Maybe he doesn't qualify. That is not true either.

Maybe he holds outrageous opinions. Actually, during the hearing process, the only significant attack made on his writings was a disagreement over his position on ergonomics. Eugene Scalia committed the "cardinal sin" of opposing the ergonomics rule as put forward by OSHA, so he was aggressively attacked during the hearings—not personally but on that issue relative to policy.

Well, that is OK. You can disagree with him on that policy point, but you have to acknowledge that on that policy point he agreed with the majority of the Congress. The Congress found the regulation that was promulgated by OSHA to be too officious, bureaucratic, counterproductive, and we—the Senate and the House of Representatives—threw the regulation out.

In my experience in the Congress, that has only occurred once or twice. We as a Congress actually rejected the regulation of OSHA on the issue of ergonomics, confirming the arguments that the younger Mr. Scalia had made on that issue.

So it is pretty hard to come to the floor with a straight face and say this man should not be confirmed as Solicitor of the Department of Labor because he took a position on ergonomics, when that position was consistent with the position taken by the Congress earlier this year.

No, regrettably, the younger Scalia is being held hostage because of attitudes toward the elder Scalia. That isn't the way we should govern. We should not prejudice an individual because of their race, their ethnic background, their gender, and we certainly should not prejudice an individual because they happen to be the son of an individual who some people do not agree with and who feel antipathy towards.

Eugene Scalia's nomination should be brought to the floor of this Senate. If people want to vote against him, that is their right. Then if he is defeated on the floor of the Senate, so be it. But let's not shuttle him off and hold him hostage to try to make a point to his father. That is not right and that is what is being done by the leadership of this Senate at this time.

Mr. President, I yield the floor.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3:30 p.m.

Thereupon, the Senate, at 1:17 p.m. recessed until 3:31 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant majority leader.

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate be in a period for morning business from now until 4:30 p.m., that the time be divided equally, and that at 4:30 the Senate go in recess subject to the call of the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that any time that is used be charged against the 30 hours under postcloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent to be recognized for 15 minutes.

The PRESIDING OFFICER. The Senator is recognized.

## PROUD NEW YORKERS

Mr. SCHUMER. Mr. President, I thank all of my colleagues for their understanding for my State and my city of New York over the last 2 months. I particularly thank the majority leader, the Senator from South Dakota; the majority whip, the Senator from Nevada; the Senator from Montana, Mr. BAUCUS, chairman of the Finance Committee; and the chairman of the Appropriations Committee, Senator BYRD; as well as all of our Senate colleagues for being there for New York in its greatest hour of need.

I spoke with the mayor of New York this morning, and we were commenting to one another about what amazing fortitude New Yorkers have. The spirits are high. The desire grows to stay the course and rebuild our city and make it greater than ever before. The desire of New Yorkers to stay in New York, if one looks at the poll numbers, is higher than ever before. The number of people when asked if they expect to be living in New York 5 years from now increased since September 11.

We know all about the bravery of the firefighters and the police officers and the rescue workers, but maybe we do not know enough about the fortitude and the love of the city had by so many in New York City and the metropolitan area of New York have. They are brave people.

As New Yorkers, we come from all over the globe. New York takes us and shapes us and makes us into Americans, and we are proud of that. We now know more than ever that America is proud of that as well.

That is the good news. The good news is the fortitude, the strength, the courage, and the good grace of the people of New York. The bad news is that despite our confidence that our nightmare will soon end, we are in trouble. Two months after the attack, the economic damage to our city is becoming increasingly apparent and has been documented in publication after publication. The damage is enormous.

Let me give some statistics. Our streets are littered with 37 miles of high-voltage electricity lines that are but one prankster away from shutting off power to our Nation's financial center. Over 40 percent of the lower Manhattan subway infrastructure has been destroyed, adding hours to the daily commute of 375,000 people who work in New York City. All our major river crossings: The Brooklyn, Manhattan and Queensboro Bridges, the Lincoln and Holland Tunnels, have been and continue to be subject to nightmarish traffic jams because of security requirements.

Two weeks ago, they were all shut down again because of the crash of flight 587. Twenty-five million square feet of commercial office space was destroyed or heavily damaged. The amount destroyed—nearly 20 million square feet—surpasses the entire office space inventory of large, important cities, such as Miami and Atlanta. Over 125,000 jobs have at least temporarily vanished from the area and the city estimates that 30,000 of those jobs, at a minimum, are gone for good.

Noxious fumes continue to emanate from the hole at the World Trade Center, creating great concern among the workers and residents for their personal health. There is even a possibility that the Hudson River retaining wall, which is underground and stops the Hudson from washing in, will break and flood the area as the debris is removed.

Insurance companies are another problem—problems come from all sides—demanding 100 percent increases from companies doing business in New York simply because they are located in a confirmed terrorist target zone. Those offers are some of the better ones. There are many insurance companies offering no insurance at all.

Mayor Guiliani has had to cut \$1 billion from the city budget just to prevent an immediate fiscal meltdown at

a time when the need for city services is at an all-time high, and Mayor-elect Bloomberg will have to cut much more than that and begin thinking about it the day he enters office because the city is staring at a \$3 billion deficit next year as a direct result of this crisis.

Governor Pataki has it even worse. The State's revenue loss is projected at \$9 to \$12 billion. The comptroller of the city of New York places the economic loss to the city and its businesses at \$105 billion over the next couple of years.

We were so proud as our city grew and grew and grew and added over 800,000 people in the last decade. It was a record. But now we have had the first decline in the city gross product in over 9 years.

In short, we have taken a hit for the Nation. None of the problems I describe was of the making of New Yorkers. None of these problems was the result of a single thing New York did or didn't do. And so we find ourselves in extremely difficult times.

Now, with Chairman BYRD and Senator DASCHLE at the helm and broad support of Senate colleagues, I believe we will ultimately get the disaster aid needed to rebuild our damaged and destroyed infrastructure. That is coming through. Some Members would like it to come through more quickly, but it is coming. We don't have much of a dispute about that.

We thank everybody. Senator CLINTON and I are extremely grateful to all of our colleagues for the support they have shown New Yorkers.

What we are here to talk about today is the need for tax provisions for New York to deal with the kind of economic damage I have mentioned. As we all know, the FEMA dollars go to the Governor, as they have for disaster after disaster. They go to replace the subway lines and streets that were destroyed. They go to pay for the cleaning up of the refuse. They deal with the firefighters and the police officers and their overtime. But none of that will give one iota of help to keep the businesses in New York or get the jobs growing to where they were.

Senator CLINTON and I put together an economic stimulus package. We had great help from the Finance Committee, Chairman BAUCUS and members of the Finance Committee, and help from the staff, led by Russ Sullivan. We were extremely grateful when it was included in our stimulus package that we presented.

The reason I take the floor today, it appears there is a good chance we will have a stimulus package. I remind my colleagues how much we need that part of the package that went for New York to remain in the package. The provisions in it are designed to counter the uncertainty and fear we believe may lead many companies to walk away

from us. We believe if we do not do it now, it will be too late.

Company after company, the large ones, the small ones, are making their decisions over the next few months as to whether they stay in lower Manhattan and in New York City or whether they leave. Once they decide to leave, we can be as generous as we want, but come next spring it won't do any good. Their leases will have been signed, their decisions will have been made.

There is urgency to do this now. It is not related to the FEMA spending or even the extra help in some of the appropriations measures that we have asked of the Appropriations Committee. Senator BYRD has been extremely generous to Senator CLINTON and myself. We have been in constant conversation with him. But this relates to tax cuts. This relates to keeping the businesses in New York lest the financial center—not just of New York but of America—dissipates. That would be a real blow to our country—not just our city but our country—because so much of the capital to build the factories and the homes and so much of the capital to start new businesses comes from the financial center located in downtown New York. It is the greatest capital market in the world.

Whether you live in Manhattan, Brooklyn, Buffalo, Albany, or even if you live in Omaha, Seattle or Wilmington, you have a real interest in seeing that financial center remain as strong as it has been. It has helped create the unprecedented prosperity we have seen.

The need to act is now. The amount of money we are asking for in a huge budget is modest. We hear, as we talk about the stimulus package, of many other needs. We are aware of them and want to be helpful, too. Maybe I am a bit parochial, but I can't think of a better need than this one—a need for New York, a need for America.

Let me outline to my colleagues—and I know many are familiar with this—the three complimentary provisions included in the stimulus package. There is \$4,800 for an employee tax credit to companies that retain jobs and to not abandon New York in the area immediately around ground zero.

There is the creation of special private activity bonds to lower the cost of redevelopment projects.

There is a provision that would permit companies that replace equipment destroyed in the World Trade Center bombing to take a special deduction if they replace that property in New York, minus the insurance costs they will get back. We all know an insurance company will give \$500 for a 2-year-old computer and you have to replace the computer with \$1,000 in costs; the difference would be deductible.

There is a one-time residential tax credit designed to encourage residents in Lower Manhattan to continue to

live there. They are all afraid. Many visited Senator CLINTON and myself here yesterday. They are scared. They are worried. These are their homes. They don't know if they should stay. This will be an incentive for them to stay and overcome the fear and disruption that has been visited upon their lives.

And there will be permission for New York municipal bond issuers and hospitals to issue advance additional refunding to help enable them to refinance their debt service.

Not a single aspect of the provision is designed to take business from another part of the country. We want to just keep what we had, what bin Laden and al-Qaida tried to take away from us.

The provisions are designed very carefully. We worked closely with both the business and labor communities. They are designed very carefully to do just enough—not more, not overly generous but just enough—to keep the businesses in New York.

I am making a humble plea. There are many, many needs and many, many conflicts embodied in the stimulus package. We need your help. I have tried in my few years as Senator to be generous.

I have tried in my years here to respond when other areas of the country needed help. I did not do it thinking New York would. We do not have the kinds of natural disasters we are accustomed to seeing in many other parts of the country. But when I heard about and read about the earthquake in California, the hurricane in Florida, the floods in North Dakota and North Carolina, I knew they needed help. Now, unexpectedly but in a devastating way, we were hit by, not a natural disaster but one very real. We need your help.

I thank Chairman BAUCUS. These provisions for New York he championed, not because of politics but because it was the right thing. He has done the right thing. I believe the Nation, with his stimulus bill which will also extend unemployment and COBRA to hard-working Americans, is the right thing to do. I thank Senator DASCHLE who has stood with us through thick and thin. Among all my colleagues I have hardly heard a word of dissent. There was tremendous sympathy.

At our Thanksgiving table this year, we closed our eyes and had some moments of silence as we thought of the thousands and thousands of New York families who, that same day, were having their Thanksgiving dinners—their turkeys and stuffing and corn bread—but at whose tables there was an empty seat. Someone wasn't there who had been there for all the previous Thanksgivings. That person will never come back. Those families' hearts will remain broken for the rest of their lives.

We remember them. We think of them. But when we talk to the families



who have survived, they tell us: Rebuild New York. Don't let those deaths be in vain. Don't let Mr. bin Laden and his evil band succeed in permanently hurting our country and our city. This is a mission. It is a mission to rebuild New York. It is a mission to rededicate ourselves, in the name of so many in the New York metropolitan area who lost their lives. We hope and we pray that all of you will join us in this effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

#### RAILROAD RETIREMENT REFORM

Mr. NELSON of Nebraska. Mr. President, I rise today in support of the Railroad Retirement and Survivors' Improvement Act of 2001.

For years, our Nation's railroad workers have played a vital role in moving commerce and passengers around this country, and it is my belief and hope that America will benefit from their hard work for years to come.

This bill is designed to strengthen the Railroad Retirement System and ensure that these men and women who have helped build, run, and maintain our railroads, have adequate resources to care for themselves and their families when they finally complete their years of hard labor.

The current system, which has been around for over 65 years, currently serves more than 690,000 retirees and their family members, and more than 245,000 active employees.

Because the Railroad Retirement System, unlike other industry pension plans, is funded by payroll taxes on employees, it is easy to see why this program, that pays retirement benefits to almost three times as many people as there are paying for those benefits, is in desperate need of reform.

Most Americans are concerned about the future of Social Security for similar reasons—because the number of retirees in America will greatly increase in the coming years as baby boomers retire. Well, the problem for Railroad Retirement is here and now, and so is the right time for a commonsense solution.

Railroad Retirement has always been restricted to investing only in government securities, and while this may have been a good policy 65 years ago, it does not make sense in today's economy.

Because of this policy, the system's annual average investment return has been far lower than that of private multiemployer pension plans.

This bill would solve that problem by allowing Railroad Retirement to be operated more like a private pension plan, by establishing a private trust in which assets of the system can be invested in various ways, including private securities.

Moreover, the legislation would shift greater responsibility to the railroad industry, and away from the government, to ensure adequate funding of the system.

Better financing means enhanced returns to provide for an improved benefit structure for Railroad Retirement beneficiaries.

These benefits would include a lowering of the incredibly high payroll taxes currently paid by railroad workers and employers; a lowering of the retirement age for those with 30 years of service to age 60; reducing the vesting period in the system from 10 years to 5; and improving the benefits paid to widows and widowers.

All of these improved benefits are desirable reforms, and they can be achieved without compromising the solvency of the system, which the Railroad Retirement Board's actuary has projected out to 75 years under this legislation.

Because this legislation is the right solution at the right time, it has received overwhelming bipartisan support in both Houses of Congress.

Last year, when the bill was first introduced, it was approved on the floor of the House by a vote of 391-25, and had the support of 80 Members in the Senate. However, after it was reported favorably by the Finance Committee, it never made it to the Senate floor.

After its reintroduction in the current Congress, the bill has again been approved by a landslide on the floor of the House, and now awaits action here in the Senate, where it has enjoyed the support of 74 cosponsors.

I urge your continued support of this legislation, and speedy passage of the reform that railroad workers and their families throughout this country so badly deserve.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. JOHNSON). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

#### THE SENATE AGENDA

Mr. THOMAS. Mr. President, we are hopefully working down to the end of this session. We have completed most of those things that we need to do. We need now to focus on those remaining items that I think are imperative for us to complete. Obviously, there are lots of things that could be done. The fact is, we have spent an extraordinary

amount of money. We are going to exceed our budget with the budget activities and, of course, about \$50 billion in addition to that. I agree that it should indeed be spent for those things. We are in an emergency situation with the terrorists. We are in an emergency situation with the economy.

The two things I believe we have to do are, No. 1, finish our appropriations. We are moving along. The House passed one of the most difficult bills yesterday. We will now undertake to do Defense appropriations. There are about four more with which we need to deal.

Then we need to finish a stimulus package. The President has called upon the Senate to pass a responsible economic stimulus bill.

It is difficult to identify what will have a short-term impact on the economy. Our economy is much lower than we would like. Indeed, as has been said, we are in a recession. But we need to do something that will have some impact.

The President has suggested a package that would extend unemployment benefits for 13 weeks for Americans who lost their jobs as a result of the terrorist attacks; making \$11 billion available to low-income people to obtain health insurance in a manner such that the system would not become mandatory in the future; \$3 billion in special energy emergency grants to help displaced workers. That has to do with health care coverage.

Then, of course, the other portion has to do with helping create jobs, which, after all, is really the result we would like. We would like to help people without jobs. Most importantly, we provide encouragement to companies and corporations by accelerating depreciation so they will invest in new material; partial expensing to encourage the purchasing of new equipment; and also have payments for low-income workers and get the money in their hands so we can see increased purchasing.

Those are things on which I hope we focus. I know we are talking about agriculture. We are talking about railroad retirement. They need to be completed. But there is a question of whether they need to be completed now with this emergency. We really need to evaluate the money. We have already made available \$12 billion in new spending for many of the things we talked about. The President and the administration determine where it will go.

I am hopeful that we can focus in the relatively short time we have left. I am pleased that we seem to be making progress in terms of the economic stimulus. The bill that came out of the committee was not a bipartisan bill. We did not work on it from both sides. Now we have a House bill that is somewhat different. We have a Democratic bill that is somewhat different. The